

Justice: Denied has published several articles related to the wrongful murder convictions of four innocent men in Boston based on the perjured testimony of one of the actual murderers – a mob hitman who was an FBI informant protected from prosecution by that agency. (See, FBI's Legacy of Shame, *Justice: Denied*, Winter 2005, Issue 27, p. 24.)

Compelling evidence supports that Frederick Weichel is another innocent victim of the FBI's intimate alliance with Boston mobsters. On the basis of one suspect eyewitness, Weichel was convicted in 1981 of a murder that Thomas Barrett later confessed to in a letter and during conversations. Barrett has been directly linked to James "Whitey" Bulger – a notorious Boston mobster protected from prosecution for many years by the FBI. (See article on p. 34 of this issue.)

As of September 2005 Weichel remains imprisoned, as he has been for 24 years. Weichel wrote *Justice: Denied* a one page letter that was accompanied by a Boston judge's October 2004 decision vacating his conviction and ordering a new trial. The state appealed to the Massachusetts's Supreme Court, where briefing will be completed in October 2005. Weichel told *Justice: Denied* the judge's decision "says it all." He is right. So *Justice: Denied* is letting his story be told by way of the judge's decision. Due to space considerations, redundancies, extraneous information and most case citations have been edited out. The full Weichel decision is available on JD's website at <http://justicedenied.org/legal/weichel1004.pdf>.

COMMONWEALTH OF MASSACHUSETTS
Norfolk ss.
Superior Court Case No. 77144
Commonwealth v. Frederick Weichel

MEMORANDUM OF DECISION AND
ORDER ON DEFENDANT'S MOTION
FOR A NEW TRIAL

1: INTRODUCTION

On August 20, 1981, a jury convicted defendant Frederick Weichel ("Weichel") of first degree murder in the Superior Court, Norfolk County, Barton, J., presiding. The Supreme Judicial Court ("SJC") affirmed his conviction on September 2, 1983. See *Commonwealth v. Weichel*. 390 Mass. 62 (1983). In August 1991, the defendant filed a motion for a new trial pursuant to Mass. R. Crim. P. 30(b) arguing ineffective assistance of counsel. Barton J. denied the motion in a margin decision, and the defendant did not appeal. Weichel now moves for a new trial pursuant to Mass. R. Crim. P. 30(b) on the grounds of newly discovered evidence and ineffective assis-

Convicted of Murder Committed By FBI Protected Mobster The Frederick Weichel Story

tance of counsel. On December 20, 2002, I granted the defendant's motion for an evidentiary hearing based solely upon the claim of newly discovered evidence and denied the motion on all of the other grounds asserted.

During the evidentiary hearing on July 22, 23, 31, August 7, September 15, and October 23, 2003, the defendant presented testimony regarding two forms of evidence to support his newly discovered evidence claim: (1) an allegedly exculpatory letter dated March 19, 1982, sent on or about that time, to the defendant's now deceased mother, Gloria Weichel, and (2) Thomas Barrett's alleged confession to killing Robert LaMonica to Sherri Robb, a social worker with whom Barrett lived with periodically in the 1980's. The defendant contends that this evidence would have been admissible at his trial, that it casts real doubt on the justice of his conviction, and that justice requires a new trial so that he can admit this evidence and a jury should have the benefit of considering it, together with all the other evidence.

II. BACKGROUND

Robert LaMonica ("LaMonica") was shot and killed near his apartment building after parking his car shortly after midnight on May 19, 1980. At the time of the shooting, four youths were gathered across the street at Faxon Park. These four eyewitnesses heard four shots and saw a man run from the direction of the shots, past the park, and into the passenger side of a parked car, which quickly left the area. None of the witnesses saw a driver.

That night and into the morning, the prosecution's key eyewitness, John Foley, worked with police to put together a composite drawing of a man strongly resembling Weichel. The next day, Foley chose the defendant's photo from an array at the police

station. About ten days to two weeks later, Foley again identified Weichel as the shooter by selecting the defendant's picture in a photo array with the police present. On June 12, 1980, during a police-escorted drive with the victim's two brothers, Foley drove around the streets of South Boston in a van and again identified Weichel as the man he saw run by Faxon Park on the night of the shooting.

At trial and on appeal, Anthony M. Cardinale ("Cardinale"), Weichel's trial and appellate counsel, presented alibi and misidentification theories, with Cardinal raising the issue of misidentification and other errors on appeal. Only one of the four youths gathered in Faxon Park on the night of the shooting, Foley, could describe the man he observed running in the distance. On cross-examination, Cardinal challenged Foley about his identification of Weichel and surrounding circumstances in an attempt to inject some degree of doubt into the jury's mind as to the accuracy of Foley's composite drawing and identification of the defendant. Foley's trial testimony revealed that he observed the man running for approximately seven seconds, *just one second of which he viewed the runner's full face*. In addition, Foley and his three companions in Faxon Park admitted to *consuming alcoholic beverages* prior to arriving at the park.

After reviewing the transcript of the defendant's trial and 1983 appeal, it is clear that the case against Weichel was not one of overwhelming guilt.

III. FINDINGS OF FACT

BARRETT'S MURDER CONFESSION LETTER

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From Wrongful Murder Conviction To Multi- Millionaire In Five Years

By Hans Sherrer

Five years ago, *Justice: Denied* reported on DeWayne McKinney's exoneration of robbery and murder convictions and his release after more than 19 years of wrongful imprisonment. See, "The 19-Year Ordeal of Dwayne McKinney: Injured and on Crutches 30 Miles Away From a Murder Is Finally Recognized as an Alibi," *Justice: Denied*, Vol. 1, Issue 11. This is an update about what Mr.

McKinney has experienced since his release.

DeWayne McKinney was convicted in 1982 of murdering the night manager of an Orange, California Burger King during the robbery of \$2,500 from the restaurant.



DeWayne McKinney near his Hawaii beachfront home in July 2005. (Allen J. Schaben / LAT)

McKinney was first implicated in the crime when one of the restaurant workers saw his

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mugshot and thought he looked similar to the gunman. The three other eyewitnesses — all restaurant workers — then identified McKinney when shown his photo. Police had a file on the 20-year-old McKinney because he had been in trouble with the law as a juvenile — most seriously when he was sent to the California Youth Authority for attempted robbery.

During his trial, the prosecution relied on the testimony of the four eyewitnesses identification of him as the killer. The prosecutor — Orange County Asst. DA Tony Rackauckas — said about the eyewitness testimony, “About the only way to bring in better evidence is if we had a movie of it.”

In convicting McKinney, the jury rejected his defense that at the time of the robbery he was home in Ontario, 30 miles from the Burger King. McKinney’s alibi was supported by several people who testified they were with him. The jury also rejected the fact that McKinney is several inches shorter than the shooter as described by eyewitnesses, and at the time of the crime he was using crutches to walk because of a leg injury — while the shooter walked without a limp or artificial aid.

McKinney was sentenced to life in prison without parole after the jury deadlocked on the death sentence sought by Rackauckas.

As the years passed, McKinney earned his high school equivalency degree, became religious, read avidly, and on the dark side — he was stabbed on two occasions, contracted tuberculosis, and attempted suicide.

Then, in 1997, a prison inmate wrote a letter to the Orange County public defender. He explained that he knew who had been involved in the Burger King robbery and murder, and that McKinney had nothing to do with it. The letter named the two men involved in the crime — the getaway car driver and the shooter.

The public defenders office began an investigation that lasted more than two years. They reconstructed the crime and re-interviewed all surviving witnesses. In addition to the new evidence of the getaway drivers’ admissions, two of the eyewitnesses recanted their identification of McKinney as the killer.

Based on the new evidence that McKinney didn’t receive a fair trial, but that he was innocent, in September 1999 the public defenders’ office filed a motion for a new trial. After Orange County DA Rackauckas — who as an assistant DA had been McKinney’s trial prosecutor and sought his execution — conducted his own investigation, he owned up to his error and agreed not to oppose the

motion. In January 2000 McKinney’s conviction was vacated and the charges dismissed.

McKinney was released from the state prison in Lancaster on January 28, 2000. From the time of his arrest he had been incarcerated for more than 19 years. He was forty years old, and he didn’t have a Social Security number, a change of clothes, or even a toothbrush.

After his release, McKinney filed a lawsuit against the City of Orange and the detective who constructed the case against him. The suit was settled in the summer of 2002 for \$1.7 million. He received a check for about \$1 million after deductions for attorneys fees and expenses.

Having heard horror stories of how money was squandered by lottery winners and other people who suddenly came into wealth, McKinney put the money in the bank as he scouted around for a place to invest it.

McKinney always had a head for business, he said recently, “I was working and selling since I was a kid. Selling papers. Washing dishes. Bagging groceries. Selling candy. Cut people’s grass. Everything I wanted, I worked and saved for all my life.”



DeWayne McKinney at one of his ATM machines in Hawaii.

His first investment was when he bought half-a-dozen condominiums in La Mirada - a Los Angeles suburb.

He then learned that it was possible for an individual to buy and operate automated teller machines (ATM). The ATM’s owner would be paid a commission on each transaction. After meeting a man whose company sold and installed ATMs, McKinney recruited two acquaintances to work on commission to find locations. His first machine was installed at a Unocal station in Santa Ana. Within a few months McKinney had 20 ATMs around Southern California.

However he felt uncomfortable in So Cal. He said recently, “In California, it was a nervous feeling. LA to me is almost like being in prison. The nervous energy, it never ceased.”

When McKinney and his wife went to Hawaii after their wedding, he found he liked the pace

of life there. So in 2003 he sold his ATMs in So Cal and bought a beachfront five-unit fixer upper apartment near Oahu’s North Shore. They lived in one unit and rented the rest.

McKinney dug right in finding good locations for an ATM. He paid a generous finders fee to anyone who gave him a tip on a location where he was able to install a machine, and he soon had ATMs all over Oahu. In 2004 McKinney and his wife divorced. They split the ATMs in the family business. Within a year McKinney built his business back up to the 20 machines he had before the divorce.

After the divorce McKinney sold for \$2.7 million, the five-unit apartment he bought for \$740,000 in 2003. He used the money to buy real estate on Oahu, including a beachfront home in Honolulu.

Although he didn’t go to college and had no job skills when he was released from prison, McKinney credits much of his success to a skill that he honed in prison - making the most of his connections. In prison you need to know the right person, and treat that person right to obtain a hard to get item or to get something done. That is called networking in the business world, and McKinney has proven since his release it is a skill he has in spades.

Less than six years after his release from 19 years of wrongful imprisonment, McKinney is a multi-millionaire living a life that most people only dream about. In July 2005 he told a Los Angeles Times reporter, “I finally found my place. I enjoy being able to breathe the fresh air, feel the wind on my face and know I’m free. I enjoy watching the sun set and the sun rise. I lay in my house with the doors open, feeling the breeze.”

Source: From Prison to a Paradise for ATMs, Stuart Pfeifer, *Los Angeles Times*, July 19, 2005.



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do that. Once pardoned, however, a person loses “standing” to petition the state for a new trial. Thus, a pardon permanently closes the principal avenue to clearing a wrongly convicted person’s record.

“I continue to be surprised at how much easier it is to convict someone who is innocent than to correct a wrongful conviction,” said David Dow of the Houston Innocence Network. “It should be simple to correct these things. It shouldn’t be a bureaucratic nightmare.”

In 2001, the Texas legislature enacted a law that allows exonerated prisoners to

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